

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1663 of 2008

Date of decision: 10.2.2016

Santokh Singh and others

.....Appellants

Versus

Kuldip Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vipin Mahajan, Advocate,
for the appellants.

Mr.Rajeshwar Singh, Advocate
for respondents No.1 and 2.

- 1. Whether Reporters of local papers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Raj Mohan Singh, J.

Defendants are in regular second appeal against the judgment and decree dated 24.3.2008 passed by Additional District Judge, Gurdaspur, whereby, judgment and decree dated 4.9.2002 passed by Civil Judge (Sr.Divn.) Gurdaspur was partly reversed, thereby granting alternative relief to the plaintiffs for

joint possession as owners to the extent of 5 kanals 13 marlas of land out of khasra number detailed in the jamabandi for the year 1981-82 (Ex.P-3) and the said jamabandi was made part of the decree.

Plaintiffs Kuldip Singh and Gurdip Singh filed a suit for declaration to the effect that they are owners in possession of land measuring 5 kanal 13 marlas with consequential relief of permanent injunction restraining defendants No.2 and 3 from illegally and forcibly dispossessing them from the suit land. In the alternative, the suit for joint possession as owner to the extent of 113/ 6797 in the joint holding measuring 239 kanals 17 marlas of land was also prayed.

Plaintiffs alleged that Gopal Singh, Gulzar Singh and deceased Kundan Singh were real brothers, who were owners of 239 kanals 17 marlas of land. Plaintiffs purchased 5 kanals 13 marlas of land from Gopal Singh vide sale deed dated 6.12.1966. Said Gopal Singh had mortgaged the same land with possession in favour of Jarnail Singh and Bhajan Singh sons of Thakur Singh vide mortgage deed dated 8.4.1965. Plaintiffs had allegedly redeemed the same from the aforesaid mortgagee and came in possession of the same. The vendor executed the sale deed in respect of specific khasra number out of total land on the strength of redemption and plaintiffs claimed exclusive possession of the land in question. Plaintiffs alleged

that they remained in continuous possession as owners till the year 1981-82 and 1986-87. Similarly in khasra girdawari from *Sauni* 1982 to *Harii* 1992, the same possession was depicted. In the jamabandi for the year 1991-92 entries were illegally changed showing defendants No.2 and 3 in the column of ownership and cultivation. The said entries are claimed to be illegal and void. Plaintiffs were never dis-possessioned from the suit land. Vendor Gopal Singh was un-married and he died issueless leaving behind his brother Gulzar Singh, who had succeeded the property. With this background, plaintiffs prayed for grant of declaration that they are owners in possession of 5 kanals 13 marlas of land with consequential relief of permanent injunction.

Defendants No.2 and 3 contested the suit on all counts. Defendants denied the ownership and possession of the plaintiffs over 5 kanals 13 marlas of land and their entitlement was questioned. Defendants asserted that the suit land was partitioned on 6.4.1971 and mutation No.695 regarding partition of joint holding was sanctioned. The partition had attained finality and thereafter, there was severance of joint status between the parties and possession was duly delivered to the defendants in respect of 5 kanals 13 marlas of land, which was part of total land measuring 23 kanals 16 marlas and was purchased by the defendants from Gulzar Singh vide sale

deed dated 29.6.1966. Defendants alleged that plaintiffs are not owners in possession of 5 kanals 13 marlas of land, rather the land measuring 23 kanals 16 marlas including the land measuring 5 kanals 13 marlas was sold by Gulzar Singh in favour of Partap Singh to the extent of 2/3rd share and Sher Singh to the extent of 1/3rd share for a consideration of ₹ 6,000/- vide registered sale deed dated 29.6.1966. Mutation was sanctioned in favour of Partap Singh (now represented through legal heirs). Land was previously mortgaged with Partap Singh and Sher Singh respectively for a consideration of ₹ 1,000/- by Gulzar Singh, who remained in possession of the land. Other averments of the plaint were denied. Sale deed dated 29.6.1966 was claimed to be prior in point of time to the alleged sale deed dated 6.12.1966 allegedly executed in favour of the plaintiffs.

Trial Court framed issues and thereafter, both the parties led evidence in support of their case.

Suit of the plaintiffs was dismissed by the trial Court vide judgment and decree dated 4.9.2002. Plaintiffs went in appeal. Lower Appellate Court, vide judgment and decree dated 24.3.2008, partly accepted the appeal and granted the alternative relief of joint possession to the extent of 5 kanals 13 marlas of land as per khasra number depicted in the jamabandi for the year 1981-82 (Ex.P-3) and that jamabandi was made part

of the decree.

I have heard learned counsel for the parties and have perused the record.

During the course of arguments, learned counsel for the appellants has argued that the lower Appellate Court has erred in granting decree for joint possession to the plaintiffs to the extent of 5 kanals 13 marlas of land as per jamabandi for the year 1981-82, Ex.P-3, whereas, it should have been out of total land measuring 239 kanals 17 marlas.

In the controversy of the present nature, it is not necessary to deliberate upon any substantial question of law as formulated by the appellants in para No.11 of the grounds of appeal. The position as culled out from the facts on record is that both the parties have purchased the suit land from their respective vendors, who were co-sharer in total land measuring 239 kanals 17 marlas. Gopal Singh sold 5 kanals 13 marlas of land to the plaintiffs vide sale deed dated 6.12.1966. Mutation of this sale was not sanctioned, whereas, Gulzar Singh sold 239 kanals 16 marlas of land including 5 kanals 13 marlas of land with specific killa number in favour of the defendants vide sale deed dated 29.6.1966. Mutation was sanctioned in respect of this sale deed.

Since the plaintiffs could not be brought on record for want of sanction of mutation in their favour, therefore, on

6.4.1971 their vendors only participated in the partition proceedings and they could not espouse their cause. Therefore, plaintiffs were not made party to the partition proceedings, which were ultimately culminated in issuance of instrumental partition (*naksha zeem*). 5 kanals 13 marlas of land was common with specific khasra number in both the sale deeds. Since the plaintiffs were not party to the partition proceedings, therefore, order of partition was apparently not binding upon them. In these circumstances, still both the parties in the absence of partition would be treated to be co-sharers in total land measuring 239 kanals 17 marlas to which their respective vendors were also co-sharers. With the purchase of even specific killa number, the sale out of joint land would be treated to be sale of share unless and until the land is partitioned by metes and bounds.

The concept of co-sharership has been defined by the Division Bench of this Court in **Sant Ram Nagina Ram vs. Deva Ram Nagina Ram and others** AIR 1961 PB 528, which was subsequently followed in **Bharthu Ram Vs. Ram Sarup, 1981, P.L.J. Page-204.** As per principles highlighted in **Sant Ram Nagina Ram's case (supra)**, every co-sharer would be deemed to be in possession of every inch of land unless and until the same is partitioned by metes and bounds. Possession of one co-sharer would be deemed to be on behalf of all the co-sharers. A co-sharer can seek injunction against the other co-

sharer only if he is found to be in exclusive possession of the portion of the land to the knowledge and ouster of the other co-sharers. The principles highlighted in the aforesaid judgments were duly endorsed by the Full Bench in **Ram Chander vs. Bhim Singh** 2008 (3) RCR (Civil) 685.

For the purposes of deciding this controversy, a consensus has arrived at during the course of arguments that instead of declaring the plaintiffs to be in joint possession of 5 kanals 13 marlas of land, they should be declared to be in joint possession in total land measuring 239 kanals 17 marlas including 5 kanals 13 marlas of land as depicted in the jamabandi for the year 1981-82, Ex.P-3.

The aforesaid position is otherwise in consonance with the concept of co-sharership. Evidently, plaintiffs were not party to the partition proceedings. If partition proceedings are not applicable to the plaintiffs they will also be treated to be co-sharers in the joint land along with the defendants. In the event of finding both the parties to be co-sharer, possession of one of the party over specific killa number would be possession of share subject to partition between the parties by metes and bounds. Therefore, it can be safely held that both the parties are co-sharer in total land measuring 239 kanals 17 marlas and the decree dated 24.3.2008 passed by learned Additional District Judge, Gurdaspur is required to be modified to hold that the

plaintiffs are entitled for alternative relief of joint possession as owners to the extent of share of 5 kanals 13 marlas out of total land of 239 kanals 17 marlas of land.

The lower Appellate Court has recorded the findings that the appellants have failed to prove that they are in possession of the suit land and therefore, they are not entitled to the declaration as prayed for.

Para Nos. 15 and 16 of the judgment of the lower Appellate Court are reproduced herein below:-

“15. Since the appellants had failed to prove that they are in possession of the suit land, so, they are not entitled to the declaration prayed for and the findings of the learned court below declining the said relief, though on different reasons, are factually and legally correct.

16. However, it is well settled legal position that sale of specific portion of the land described a particular khasra number by a co-sharer out of the joint khata would be sale of share out of the joint khewat. Admittedly, Gopal Singh and Gulzar Singh who are in the predecessor-in-interest of the appellants and respondent Nos. 2 and 3 Partap Singh and Sher Singh were the co-sharers in the year 1966

when both the sale deeds were executed. In such a situation, the sale by Gopal Singh in favour of plaintiffs vide sale deed Ex.P-2 and the sale by co-sharer Gulzar Singh vide sale deed, Ex.D-3 are sale of the share from the joint khewat and not sale of specific khasra number since at that time, the partition was not effected. The partition has been effected vide order dated 6.8.1971 and both the sale deeds were executed prior to the said partition. On this point, I am also supported by the observation of the Hon'ble Supreme Court of India in **Pokhar (dead) by LRs. And others vs. Ram Singh, 2002 (1) PLJ, 58** where it was held that a sale of a specific portion of land described by the particular khasra number by a co-owner out of joint khewat would be sale of share out of the joint khewat and pre-emptible under Section 15 (1) (b) of the Act.”

Having perused the facts in the light of observations made by the lower Appellate Court, it would be just and expedient to put an end to the ongoing controversy between the parties by granting alternative relief to the plaintiffs in respect of joint possession as owners to the extent of share of 5 kanals 13 marlas (113/6797 share) out of 239 kanals 17 marlas of land which is also in consonance with the prayer made by the

plaintiffs in the head note of the plaint.

With the aforesaid modification, this appeal is disposed of. Both the parties are left to bear their own costs.

**(RAJ MOHAN SINGH)
JUDGE**

February 10, 2016

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